IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1213 OF 2006

Bomay Intelligence Security (India) Ltd. & Anr. ... Petitioners

Versus

Oil and Natural Gas Corporation Ltd. and Ors. ... Respondents

Mr. D.D. Madon, Senior Counsel with Mr. Pankaj **Kawali i/by Doijode & Associates for Petitioner.**

Mr. Ravi Kadam, Advocate General with Ms. Snehal Paranjape i/by M. Dhruva & Co. for R. No. 1.

Mr. Anil Singh with Mr. N.R. Prajapati for Respondent No. 7.

Mr. Haresh Motwani for R. No. 8.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : MAY 05, 2006

P.C.

1. The Respondent No. 1 had invited tenders for Security services at their offices, godowns, sites, colonies etc. in Mumbai region. The Petitioner was one of the bidders. According to the Petitioner, the Respondent Nos. 8 and 9 were not qualified as per the bid evaluation criteria of the tender and consequently their price bids ought to

have been rejected. In the first week of March, 2006, they reliably learnt that the tender committee of Respondent No. 1 consisting of Respondent Nos. 3 to 6 recommended awarding contracts to Respondent Nos. 8 and 9 on the basis of assurances that non-qualifying factors will be complied by Respondent Nos. 8 and 9 after the contracts are awarded to them.

2. In so far as Respondent No. 8 is concerned, it was contended that the Petitioner had failed to submit copies of provident fund annual slips issued by the Regional Provident Fund Commissioner for five years in respect of Receptionists who were engaged by Respondent No. 8 at the premises of Respondent No. 1. It is also pointed out that the proceedings under Section 17 of the Employees Provident Fund Act have been initiated against Respondent No. 8 for recovery of provident fund dues for more than a crore of rupees. These proceedings were challenged in this court by filing Writ Petition No. 3694 of 2003. That Petition was dismissed and Respondent No. 8 preferred an appeal, where the tribunal had directed Respondent

No. 8 to deposit the amount as demanded by Provident Fund Authorities. It is also pointed out that Respondent No. 8 had committed defaults in remitting contributions to ESIC department and an enquiry was going on in the matter. The E.S.I.C. Department has recovered the sum of Rs.10.71 lacs. from Respondent No. 1 out of the bills of Respondent No. 8 raised on Respondent No. 1 for the month of June and July, 2005.

3. In so far as Respondent No. 9 is concerned, it is submitted that Respondent No. 9 did not have their own office establishment either in Mumbai or Navi Mumbai and was not registered with the Maharashtra Security Guards Board nor were they exempted under the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 by the Government of Maharashtra.

4. On behalf of Respondent No. 1, Mr.N.C Burman, the Senior Security Officer has filed an affidavit. It is pointed out, that out of five bidders, four bidders were shortlisted for the opening of the price bids on 17th October, 2005, which consisted

of the Petitioners and Respondent Nos. 8, 9 and 10. The technical evaluation of all the bidders was completed on 11.10.2005 and price bids of shirt listed bidders (i.e. Petitioner, Respondent Nos. 8, 9 and 10) were opened on 17th October, 2005. The Petitioner had made no grievance untill opening of the price bids whatsoever in the intervening period between the opening of the technical bids and the opening of the price bids. It is only when the petitioners found that they were not the lowest bidders, that the Petitioners chose to make baseless and frivolous allegations on 20.10.2005 against the first respondent with a view to secure benefits not legally due to the Petitioners under the said tender. It is pointed out that the letter of award dated 27th March, 2006 has already been issued by the first respondent to Respondent No. 8 in respect of the services to be provided in the Godowns and Offices of Respondent No. 1. The first respondent is in the process of issuing a letter of award to Respondent No. 9 in as much as Respondent No. 9 was also the lowest bidder qualified under the tender conditions and was in the course of negotiations to request to match the

bid of Respondent No. 8 in respect of providing services to the colonies of the first respondent as set out in the tender. It is then pointed out that the issue regarding Office establishment has to be construed by taking into consideration Clause IV (5) and IX(13). In so far as the dues relating to provident fund is concerned, the Provident fund slip has been received and had been distributed for the year 2002-03. Reference is also made to letter dated 31.1.2006 stating that as per records Respondent No. 8 had remitted PF dues of Rs.41,67,121/- of its employees.

5. The Respondent No. 8 also filed an affidavit. It is pointed out that their bid was the lowest bid. It is also pointed out that the annual provident fund slips have been issued to the employees for the year 2001-02, 2002-03. For the year 2003-04, it is in process at RPFC Thane. It is also pointed out that the Petitioners had paid sum of Rs. 1,86,08,607.00 as Provident Fund dues and there is no default.

6. A conjoint reading of the terms of the tender

conditions as also the averments in the affidavit in the matter of payment of provident fund dues, in our opinion, the Petitioner has been unable to make out a case that the Respondent No. 8 was disqualified. In our opinion the Respondent No. 8 considering the material on record had met all the requirements and the tender committee had accepted their technical bid at which time the Petitioner had made no objections. In the light of that, we are not required to interfere with the tender awarded in respect of Respondent No. 8 as it was the lowest. Apart from that the work order has been issued.

7. In so far as Respondent No. 9, the main contention as urged before us was that Respondent No. 9, was not registered with the Maharashtra Security Guards Boards in the relevant area under the provisions of the Act. The documents produced before us clearly indicate that the registration in respect of services in Pune area. On behalf of respondent No. 1 their learned counsel fairly concedes that the bid of Respondent No.9 was comparatively lesser than the bid of the

Petitioners. The respondent No. 1 would not be issuing the award in favour of Respondent No. 9. On a consideration of the price received, it will retender the bid. The statement made on behalf of Respondent No. 9 is accepted. Once that be the case, the Petition stands disposed of. In the circumstances of the case, there shall be no order as to costs.

(F.I. REBELLO,J.)

(ANOOP V. MOHTA,J.)